

Title 14. California Code of Regulations
**Chapter 3. Guidelines for Implementation of the
California Environmental Quality Act**

Article 17. Exemption for Certified State Regulatory Programs

Sections 15250 to 15253

15250. General

Section 21080.5 of the Public Resources Code provides that a regulatory program of a state agency shall be certified by the Secretary for Resources as being exempt from the requirements for preparing EIRs, Negative Declarations, and Initial Studies if the Secretary finds that the program meets the criteria contained in that code section. A certified program remains subject to other provisions in CEQA such as the policy of avoiding significant adverse effects on the environment where feasible. This article provides information concerning certified programs.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21080.5, Public Resources Code.

Discussion: This section clarifies the scope of the exemption provided by certification under Section 21080.5. The exemption applies only to Chapter 3 of CEQA, the chapter which requires state agencies to prepare EIRs and Negative Declarations. Other provisions of CEQA continue to apply to a certified program where relevant. In *EPIC v. Johnson*, (1985) 170 Cal. App. 3d 604, the court held that PRC Section 21080.5 provided a limited exemption from CEQA and that the Forest Practices Act (FPA) and administrative rules though exempt from Chapter 3 of CEQA, remained subject to the other policies of CEQA such as avoiding significant environmental effects. The court added that exemptions specified in the statute precluded additional exemptions from being implied or presumed absent specific legislative intent.

The court in *EPIC v. Johnson* further held that under certified regulatory exempt programs state agencies must consult with trustee agencies even though they are exempt from the need to prepare an EIR.

The exemption for the certified state regulatory programs is not a blanket exemption from CEQA as the agency must still comply with CEQA's policies, evaluation criteria and standards. The required environmental review must address all activities and impacts associated with a project. *Laupheimer v. California* (1988) 200 Cal. App. 3d 440, *Environmental Protection Information Center, Inc. v. Johnson* (1985) 170 Cal. App. 3d 604. Only activities of the agency specified in the certified regulatory program are subject to partial exemptions. Thus while some of the agency's activities may be within the certified program, others may not be exempt and would still be subject to review under CEQA. *Citizens for Non-Toxic Pest Control v. Department of Food and Agriculture* (1986) 187 Cal. App. 3d 1575.

15251. List of Certified Programs

The following programs of state regulatory agencies have been certified by the Secretary for Resources as meeting the requirements of Section 21080.5:

(a) The regulation of timber harvesting operations by the California Department of Forestry and the State Board of Forestry pursuant to Chapter 8, commencing with Section 4511 of Part 2 of Division 4 of the Public Resources Code.

- (b) The regulatory program of the Fish and Game Commission pursuant to the Fish and Game Code.
- (c) The regulatory program of the California Coastal Commission and the regional coastal commissions dealing with the consideration and granting of coastal development permits under the California Coastal Act of 1976, Division 20 (commencing with Section 30000) of the Public Resources Code.
- (d) That portion of the regulatory program of the Air Resources Board which involves the adoption, approval, amendment, or repeal of standards, rules, regulations, or plans to be used in the regulatory program for the protection and enhancement of ambient air quality in California.
- (e) The regulatory program of the State Board of Forestry in adopting, amending, or repealing standards, rules, regulations, or plans under the Z'berg-Nejedly Forest Practice Act, Chapter 8 (commencing with Section 4511) of Part 2 of Division 4 of the Public Resources Code.
- (f) The program of the California Coastal Commission involving the preparation, approval, and certification of local coastal programs as provided in Sections 30500 through 30522 of the Public Resources Code.
- (g) The Water Quality Control (Basin)/208 Planning Program of the State Water Resources Control Board and the Regional Water Quality Control Boards.
- (h) The permit and planning programs of the San Francisco Bay Conservation and Development Commission under the McAteer-Petris Act, Title 7.2 (commencing with Section 66600) of the Government Code; and the planning program of the San Francisco Bay Conservation and Development Commission under the Suisun Marsh Preservation Act, Division 19 (commencing with Section 29000) of the Public Resources Code.
- (i) The pesticide regulatory program administered by the Department of Pesticide Regulation and the county agricultural commissioners insofar as the program consists of:
 - (1) The registration, evaluation, and classification of pesticides.
 - (2) The adoption, amendment, or repeal of regulations and standards for the licensing and regulation of pesticide dealers and pest control operators and advisors.
 - (3) The adoption, amendment, or repeal of regulations for standards dealing with the monitoring of pesticides and of the human health and environmental effects of pesticides.
 - (4) The regulation of the use of pesticides in agricultural and urban areas of the state through the permit system administered by the county agricultural commissioners.
- (j) The power plant site certification program of the State Energy Resources Conservation and Development Commission under Chapter 6 of the Warren-Alquist Act, commencing with Public Resources Code Section 25500.
- (k) The regulatory program of the State Water Resources Control Board to establish instream beneficial use protection programs.
- (l) That portion of the regulatory program of the South Coast Air Quality Management District which involves the adoption, amendment, and repeal of regulations pursuant to the provisions of the Health and Safety Code.
- (m) The Program of the Delta Protection Commission involving the preparation and adoption of a Resources Management Plan for the Sacramento-San Joaquin Delta (Pub. Resources Code §29760 ff.), and the Commission's review and action on general plan amendments proposed by local governments to

make their plans consistent with the provisions of the Commission's Resource Management Plan (Pub. Resources Code §29763.5).

(n) The program of the Department of Fish and Game for the adoption of regulations under the Fish and Game Code.

(o) The program of the Department of Fish and Game implementing the incidental take permit application process under the California Endangered Species Act ("CESA"), Fish and Game Code sections 2080 and 2081, and specifically the regulation governing the Department of Fish and Game's role as a "lead agency" when issuing incidental take permits, found at California Code of Regulations, Title 14, section 783.5(d).

(p) The regulatory program of the Department of Fish and Game for review and approval of voluntary local programs for routine and ongoing agricultural activities, as authorized by the California Endangered Species Act, Fish and Game Code section 2086.

Note: Authority cited: Sections 21083 and 21080.5, Public Resources Code; Reference: Section 21080.5, Public Resources Code.

Discussion: Section 15251 lists the programs which have been certified by the Secretary for Resources as meeting the requirements in Section 21080.5. The certifications of individual programs have been handled as rule-making proceedings characterized as proposed amendments to this section. Certification of a program formally recognizes that an environmental analysis undertaken in compliance with the certified program is the functional equivalent of a CEQA analysis.

15252. Substitute Document

(a) The document used as a substitute for an EIR or Negative Declaration in a certified program shall include at least the following items:

(1) A description of the proposed activity, and

(2) Either:

(A) Alternatives to the activity and mitigation measures to avoid or reduce any significant or potentially significant effects that the project might have on the environment, or

(B) A statement that the agency's review of the project showed that the project would not have any significant or potentially significant effects on the environment and therefore no alternatives or mitigation measures are proposed to avoid or reduce any significant effects on the environment. This statement shall be supported by a checklist or other documentation to show the possible effects that the agency examined in reaching this conclusion.

(b) The notice of the decision on the proposed activity shall be filed with the Secretary for Resources.

Authority cited: Section 21083, Public Resources Code. Reference: Section 21080.5, Public Resources Code.

15253. Use of an EIR Substitute by a Responsible Agency

(a) An environmental analysis document prepared for a project under a certified program listed in Section 15251 shall be used by another agency granting an approval for the same project where the conditions in

subsection (b) have been met. In this situation, the certified agency shall act as Lead Agency, and the other permitting agencies shall act as Responsible Agencies using the certified agency's document.

(b) The conditions under which a public agency shall act as a Responsible Agency when approving a project using an environmental analysis document prepared under a certified program in the place of an EIR or Negative Declaration are as follows:

(1) The certified agency is the first agency to grant a discretionary approval for the project.

(2) The certified agency consults with the Responsible Agencies, but the consultation need not include the exchange of written notices.

(3) The environmental analysis document identifies:

(A) The significant environmental effects within the jurisdiction or special expertise of the Responsible Agency.

(B) Alternatives or mitigation measures that could avoid or reduce the severity of the significant environmental effects.

(4) Where written notices were not exchanged in the consultation process, the Responsible Agency was afforded the opportunity to participate in the review of the property by the certified agency in a regular manner designed to inform the certified agency of the concerns of the Responsible Agency before release of the EIR substitute for public review.

(5) The certified agency established a consultation period between the certified agency and the Responsible Agency that was at least as long as the period allowed for public review of the EIR substitute document.

(6) The certified agency exercised the powers of a Lead Agency by considering all the significant environmental effects of the project and making a finding under Section 15091 for each significant effect.

(c) Certified agencies are not required to adjust their activities to meet the criteria in subdivision (b). Where a certified agency does not meet the criteria in subdivision (b):

(1) The substitute document prepared by the agency shall not be used by other permitting agencies in the place of an EIR or Negative Declaration, and (2) Any other agencies granting approvals for the project shall comply with CEQA in the normal manner. A permitting agency shall act as a Lead Agency and prepare an EIR or a Negative Declaration. Other permitting agencies, if any, shall act as Responsible Agencies and use the EIR or Negative Declaration prepared by the Lead Agency.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21002.1(d), 21080.5, and 21165, Public Resources Code.

Discussion: The purpose of this section was to allow a certified state environmental regulatory agency to act as a Lead Agency and, thereby, enable other agencies that would have to grant a permit for the same project to use the EIR substitute prepared by the certified agency. In this way, the other permitting agencies would act in the role of Responsible Agencies.

The criteria outlined in subsection (b) are modeled after the consultation requirement that applies to Lead and Responsible Agencies under the normal EIR process. The same basic steps would be required. The certified agency would be required to consult with the other permitting agencies for the project, and the expressed concerns of other agencies.

Section 15253 is not intended to require certified agencies to act as Lead Agencies. Rather, the section

serves as authority for certified agencies to act in the Lead Agency role if they choose to consult with other permitting agencies as outlined in the section. Subsection (c) is added to show that a certified agency does not need to act as a Lead Agency if it does not choose to do so. If the certified agency does not consult with the other agencies, it will complete its process on its own. The other permitting agencies would then be required to comply with CEQA in the normal manner. One of the permitting agencies would act as Lead Agency and prepare an EIR or a Negative Declaration. The other permitting agencies would act as Responsible Agencies and use the EIR or Negative Declaration prepared by the Lead Agency.